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ARTICLE

Navigating Data Centre Investments in Denmark: Key Legal Mechanisms for Investors

Data centres have emerged as a significant investment opportunity in Denmark. With 49 data centres currently operating across the country and substantial expansion underway, the sector is projected to grow by 160% towards 2028, supporting 18,000 jobs and contributing DKK 11.4 billion to GDP. Denmark offers attractive conditions for data centre placement: excellent international data connections, a stable political and business environment, a well-functioning electricity market with high security of supply, a high share of renewable energy, and relatively low temperatures reducing cooling requirements.

Among other successful data centre investment in Denmark requires careful attention to specific legal mechanisms and contractual frameworks. This article examines some of the key legal considerations that investors should address.

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Key Contractual Mechanisms for Data Centre Investments

Power Procurement and Grid Connection

Power procurement represents perhaps the most critical legal and commercial challenge in data centre investments. The data centre industry's share of total electricity consumption has risen from 3% in 2021 to 7% in 2024, representing a significant increase in demand. At the same time, access to grid capacity has become a key bottleneck, making the ability to secure and structure grid connections a decisive investment factor. In addition, total grid capacity for data centres is expected to reach 1,000 MW in 2030, 4,100 MW in 2040 and 5,250 MW by 2050", with capacity rising sharply until the late 2030s as several data centre projects are expected to be established in Denmark during this period.

Grid Connection Priorisation, Land Security and Investment Risk

From 2026, Energinet no longer processes grid connection applications strictly on a "*first come first serve basis*". Instead, applications are prioritised based on documented project maturity, which directly affects the investor's position in the grid connection queue, as data centre projects in Denmark typically pass through three phases - screening, maturation and establishment – each requiring increasing commitments and payments to Energinet.

This creates a structural investment dilemma: securing a favourable queue position requires a high degree of project maturity, including secured land, permitting progress and committed financing, while investors may be reluctant to fully commit capital before clarity is obtained on grid connection timing and capacity. As a result, land acquisition and early-stage investment increasingly become risk-bearing preconditions for obtaining grid access, rather than consequences of it.

Investors must therefore demonstrate that the project is sufficiently advanced, including (examples and not limited to):

- Zoning and local planning maturity
- Building permits
- Documented investor interest and financing
- Concrete commissioning plans and a realisable timeline

Insufficient documentation risks placement at the back of the grid connection queue, potentially delaying or undermining the entire investment case. This necessitates close coordination between land acquisition, property development, permitting, financing and grid connection strategy from an early stage.

Power Capacity, Consumption and Flexibility

Grid connection and procurement arrangements must secure rights to draw the full contracted power capacity while allowing for operational flexibility. Actual electricity consumption is materially lower than contracted capacity in the early years of operation, with utilisation estimated at approximately 60% initially and gradually increasing over time. This structural mismatch must be reflected in grid connection agreements and PPAs to avoid unnecessary cost and risk exposure.

In addition, bidirectional capacity and balancing arrangements, allowing power to be supplied back to the grid, are increasingly relevant.

PPA's, Direct Lines and Alternative Energy Sourcing

PPAs remain a key instrument for securing long-term energy supply, either as physical PPAs linked to specific generation assets or as financial PPAs combined with grid-supplied power.

Where grid capacity is constrained, energy supply may also be secured through direct lines or by establishing data centres in close connection with energy parks, subject to regulatory approval. Surplus generation can be managed through agreements allowing for offset of electricity back to the grid, including balancing agreements.

Key Contractual and Construction Considerations

Power procurement and grid arrangements should address:

- Force majeure provisions accounting for grid operators' inability to deliver power
- Clear allocation of responsibility between investor, operator and power supplier
- Compensation mechanisms for failure to deliver
- Rights of recourse against power suppliers

Service Level Agreements and Gap Analysis

Service Level Agreements ("SLA") establish performance standards for data centre operations. Key components include service availability guarantees (e.g. 99.999% uptime), support response times, issue resolution timeframes, performance metrics, and security measures.

A critical consideration in the Danish context is ensuring alignment between SLAs and obligations under underlying procurement agreements, preventing gaps from arising. Specifically:

- SLA obligations regarding power delivery must match what can be delivered under procurement agreements
- Remedies for SLA breaches should be appropriately limited (typically to rent credits and termination rights)
- If remedies are not thus limited, investors may face indirect exposure to tenants' consequential losses and indemnity claims

Contractual Mechanisms

Right of First Refusal ("ROFR")

The relevance and structure of ROFR provisions varies significantly between data centre types in Denmark.

Hyperscale facilities: ROFR provisions are highly relevant for hyperscale facilities, which typically serve one or few large anchor tenants. ROFR may encompass:

- Rights to adjacent capacity
- Rights to purchase the facility
- Rights to match third-party offers

Colocation facilities: ROFR are less relevant for colocation facilities, which by definition serve multiple tenants. Individual ROFR would render efficient operation commercially impractical.

Investors should recognise that granting ROFR to tenants can reduce liquidity on exit by limiting the pool of potential purchasers, restrict the investor's ability to optimise rental income through competitive leasing processes, and create valuation uncertainty due to the encumbrance on the asset.

Break Clauses

A critical protective mechanism can be implemented through break clauses. Break clauses are often seen both in offtake agreements with the users / tenants, but also on investor level break clauses are relevant. Specifically, we often see break clauses relating to change of control where investors and users may want to protect themselves against unwanted ownership. This could be in form of preventing competitors or sanctioned entities taking over, and within the defence-sector (including dual-use) there is also a consideration for not having owners situated in or affiliated with what the user or investor classifies as "hostile" countries. Failure to comply with such clauses provides the users or investor with a unilateral right to terminate the agreement.

Break clauses may be triggered by:

- Breach of code of conduct provisions
- Reputational risks, particularly arising from transactions with sanctioned entities
- Failure to comply with sanctions compliance obligations
- Material changes in the operator’s control structure

For hyperscale facilities, break clauses may be more comprehensive than for colocation facilities serving multiple tenants, reflecting the different risk profiles of these investment types.

Reputational risks: Beyond formal sanctions violations, broader reputational considerations must be addressed, including political exposure of tenants, beneficial owners, activities potentially damaging to the investor's or operator's reputation, and use of facilities for controversial purposes. These considerations should be appropriately addressed and reflected in the formulation of break clause provisions.

Key Person Clauses

Where a data centre operator is new or with insufficient track record, we often see options for termination of contract if certain key persons leave the organization and are not replaced by persons with same know-how, often implementing a cure period allowing the operator to find adequate replacement. In such cases, key person clauses move from being a standard investor protection mechanism to a central value-preservation tool.

Typical key person provisions encompass:

- Identification of specific key persons whose individual expertise, rather than institutional experience, was critical to the investment decision
- Requirements that a minimum number remain actively involved in the project for a defined period or until key development milestones have been achieved
- Prior approval requirements for replacements
- Standards for acceptable replacements requiring demonstrably equivalent competence and sector-specific experience
- Consequences upon loss of key persons, including rights to increased information and control, step-in or operator replacement rights, rights to replace operator, or in extreme cases, rights to exit the investment

This approach is particularly relevant for new market entrants, including private equity-backed platforms and developers expanding into the data centre sector for the first time. In such cases, the credibility of the investment thesis often rests on the ability to attract and retain a small number of highly specialised individuals with proven data centre expertise.

In the Danish context, where the data centre market remains relatively young, this dynamic is further amplified, as several players seek to establish themselves by assembling teams with sufficient know-how. Ensuring the continued involvement of these individuals is therefore of material importance to investors or users.

The key person clauses could be implemented with a sunset regulation, meaning that the key persons clause becomes invalid after some time as the organizational know-how have been built up, making the organization (and investors as well as users) less dependent on the key individuals.

Other Relevant Considerations

Beyond the mechanisms outlined above, investors should address additional matters when investing in data centres in Denmark, including foreign direct investment (FDI) screening and approvals, cyber security requirements and regulation, data protection and GDPR compliance, planning and environmental approvals, and tax structures.

Conclusions

We recommend that investors focus on getting the legal foundations right when entering the Danish data centre market. From development agreement, asset management agreements, procurement arrangements, aligned SLAs, and sound lease economics - we see these elements as some of the critical to a successful investment. Add to this proactive grid connection management, carefully considered ROFR provisions, robust sanctions compliance, and key person protections.

Investors adopting a careful and coordinated approach to navigating these issues will be better positioned to realise their commercial objectives and achieve optimal returns in the Danish data centre market.

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